

No. 9/5/84-6Lab/1536.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Managing Director, Haryana State Minor Irrigation and Tubewell Corporation, Chandigarh, (ii) Executive Engineer, Haryana State Minor Irrigation (Tubewells) Corporation, Division No. 2, Fatehabad.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 205 of 1983

between

SHRI JAWAHAR SINGH, WORKMAN AND THE MANAGEMENT OF M/S (i) MANAGING DIRECTOR, HARYANA STATE MINOR IRRIGATION AND TUBEWELL CORPORATION, CHANDIGARH, (ii) EXECUTIVE ENGINEER, HARYANA STATE MINOR IRRIGATION TUBEWELL CORPORATION, DIVISION NO. 2, FATEHABAD

Shri T.C. Gupta, A. R., for the workman.

Shri B.K. Bansal, J.E., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Jawahar Singh and the management of M/s (i) Managing Director, Haryana State Minor Irrigation and Tubewell Corporation, Chandigarh, (ii) Executive Engineer, Haryana State Minor Irrigation and Tubewell Corporation, Division No. 2, Fatehabad, to this Court, for adjudication,—vide Labour Department Gazette notification No. 58760-65, dated 9th November, 1983 :—

Whether the termination of services of Shri Jawahar Singh is justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference notices were issued to the parties. The parties appeared. The case of the workman is that he was employed as T/Mate by the respondent on 1st January, 1980 and that his services were dispensed with by the respondent unlawfully on 31st March, 1983 without any prior notice or payment of retrenchment compensation as envisaged under section 25-F of the Industrial Disputes Act, 1947.

3. A reply was filed by the respondent. It is alleged that the workman was employed on temporary basis for execution of a specific project and so, services of the workman were purely temporary and could be dispensed with without any notice. Further more it is alleged that the workman remained absent from duty with effect from 18th October, 1982 to 31st October, 1982. So, there was a break in his employment.

4. On the pleadings of the parties, the following issue was settled for decision by me on 16th November, 1984 :—

(1) Whether the termination of services of Shri Jawahar Singh is justified and in order? If not, to what relief is he entitled?

5. The workman appeared as his own witness as WW-1 and the management examined Shri B.K. Bansal, Junior Engineer as MW-1. I have heard their Representatives. My findings on the issue are as below:—

Issue No. 1 :

6. The workman when appeared as his own witness as WW-1 made a statement completely in corroboration of the allegations made in the claim statement and so, I need not suffer repetition.

7. The respondent witness Shri B.K. Bansal, Junior Engineer, stated that the workman was employed on 1st May, 1985 and he worked up to 30th April, 1983 and during this period he remained absent from 18th October, 1982 to 31st October, 1982. Even if this period is excluded, even then the workman has worked for more than 240 days with the respondent during the last 12 calendar months from the date of his termination. The services of the workman could not be dispensed with by the management in the manner it did, because the order of termination does not counter to the provisions of the Industrial Disputes Act, 1947 and so, the same is set aside and the workman is ordered to be reinstated forthwith with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 16th February, 1985,

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 205/83/319, dated 21st February, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/1537.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Haryana Roadways, Sirsa.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 35 of 1983

between

SHRI RAI SINGH, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS,
SIRSA

Shri V.K. Bansal, A.R., for the workman.

Shri V.K. Kohli, L.A., for the respondent.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Rai Singh and the management of Haryana Roadways Sirsa, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. 1D/19789—93, dated 27th April, 1983 :—

Whether the termination of services of Shri Rai Singh is justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed as a Conductor with the respondent for the last about 20 years on monthly wages of Rs. 500 and that his services were terminated on 21st October, 1979 without any lawful enquiry or prior notice or payment of any compensation. It is further alleged that the workman presented himself before the Enquiry Officer on the date but the Enquiry Officer was not present and thereafter the workman did not receive any notice about the fixation of enquiry date.

3. On behalf of the respondent reply has been filed rebutting the claim of the petitioner *in toto*.

4. On the pleadings of the parties, the following issue was settled for decision on 21st August, 1984.

(1) Whether the termination of services of Shri Rai Singh is justified and in order ? If not, to what relief is he entitled ?

5. Both the parties were allowed to produce their evidence. The management examined MW-1 Shri Dharam Chand, Superintendent and the workman appeared as his own witness as WW-1. I have heard the learned Representatives of the parties. My findings on the issue framed are as below.

Issue No. 1 :

6. Though the management has placed on record Ex. MW-1/1 to Ex. MW-1/6, record of the chargesheet and the show cause notice served upon the workman and the order of dismissal passed after alleged enquiry report but the management has not examined the Enquiry Officer in the Court nor has it placed on record the alleged findings of the Enquiry Officer, though there is a mention of the enquiry findings in the order of termination Ex. MW-1/6 passed by the General Manager, Haryana Roadways, Sirsa on 24th October, 1979. During the course of arguments the learned Legal Adviser of the respondent frankly conceded that no enquiry was held into the alleged allegations against the workman and he cannot explain the reasons as to how the enquiry findings figure in the final order of dismissal passed by the General Manager, Haryana Roadways, Sirsa. On behalf of the workman Shri B.K. Bansal has cited 1983 (2) SLR 685 between Jagsir Singh *versus* State of Punjab and others. In the case under reference an enquiry was held by the respondent management, though the enquiry procedure adopted by the Enquiry Officer was not found to be legal and justifiable. But in the present case, though the management has placed on record the alleged chargesheet and show cause notice served upon the workman and also a copy of the final show cause notice given to him before passing the order of termination. But interestingly the most important document, the alleged finding of the Enquiry Officer has not been placed on record, nor the same has been

proved. So, the order of termination passed by the General Manager, Haryana Roadways, Sirsa, was in gross violation of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and as such the order of termination passed against the workman is set aside.

7. Before parting with this award, I am constrained to observe that the then General Manager, Haryana Roadways, Sirsa Shri Parbhu Dutt (I have made out the name from his signature upon the order of termination Ex. MW-1/6) passed the order of termination without even having a glance at the alleged enquiry findings against the workman. If any enquiry would have been held, as mentioned in the order of termination, there was no reason that the same would not have been placed on record by the management. So, the General Manager, Haryana Roadways, Sirsa, passed the order of termination in a most perfunctory manner without perusing the record and in the process caused huge loss to the State Transport, because the workman shall be reinstated with full back wages and continuity of service.

8. In the light of my fore-going discussion, holding the order of dismissal illegal and void *ab initio*, the workman is ordered to be reinstated forthwith with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 16th February, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 35/83/320, dated 21st February, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/1538.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Murarka Engineering Works, B-6, Modern Industrial Area, Bahadurgarh, District Rohtak.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 36 of 82.

between

SHRI C.L. BANSAL, WORKMAN AND THE MANAGEMENT OF M/S. MURARKA ENGINEERING WORKS, B-6, MODERN INDUSTRIAL AREA, BAHADURGARH, DISTRICT ROHTAK

Shri R.C. Sharma, A.R., for the workman.

Shri M.M. Kaushal, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri C.L. Bansal and the management of M/s Murarka Engineering Works, B-6, Modern Industrial Area, Bahadurgarh, District Rohtak, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/RTK/123/81/5871, dated 4th February, 1982 :—

Whether the termination of service of Shri C. L. Bansal was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was appointed as an Accountant with the respondent,—*vide* its letter dated 20th June, 1980 on monthly salary of Rs. 750 on probation, though verbally he was assured that he has been appointed on permanent post, and because on this assurance he left his previous job and that as per Certified Standing Orders of the respondent, the workman was employed on a permanent post and not as a probationer and

that his work and conduct was satisfactory but the respondent tried to burden the applicant with additional duties of purchase and liaison work without payment of any over time and also connive in the illegal activities, which the workman refused and so the respondent terminated his services without passing any speaking order and that he raised an industrial dispute and conciliation proceedings took place, which proved abortive and so, he has prayed for reinstatement with continuity of service and with full back wages.

3. In detailed reply filed by the respondent, preliminary objections taken are that initially Government of Haryana refused to make a reference to the Court but later on relented without any fresh grounds being alleged by the applicant and that the applicant is not a workman as per the definition given in section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that the applicant was working as an Accountant in a supervisory capacity and that his services were terminated during the period of probation. On merit also they have controverted the claim of the petitioner.

4. In the rejoinder filed by the workman, he has denied the various pleas propounded by the respondent.

5. On the pleadings of the parties, the following issues were settled for decision on 30th August, 1982 :—

- (1) Whether the reference is bad in law as per the reason given in paras 1, 3 and 4 of the preliminary objections ?
- (2) Whether the applicant is a workman under section 2(s) of the Industrial Disputes Act, 1947 ?
- (3) Whether the termination of services of Shri C.L. Bansal was justified and in order ? If not, to what relief is he entitled ?

6. Both the parties were allowed to produce their evidence. The management examined MW-1 Shri Ram Murti Gupta, Manager, and the workman examined WW-1 Shri Krishan Gopal and himself appeared as WW-2. My findings on the issues framed are as below :—

Issue No. 2:

7. To prove this issue reliance was placed upon the statement of MW-1 Shri Ram Murti Gupta, Manager, who stated that the applicant was employed as Accountant by the respondent,—vide letter Exhibit M W 1/1 and that he was appointed as probationer and that service conditions of the employee were governed by the Model Standing Orders of the company and under the applicant were Assistant Accounts Clerk, Typist and the respondent company was set up in the year 1980 and the entire work used to be looked after by the applicant, because in those days he or the proprietor of the company were not regular visitors to the concern at Bahadurgarh and that the applicant used to look after the excise and taxation work of the respondent company and used to file returns in that behalf.

8. On the other hand, the workman examined Shri Krishan Gopal, who stated that he was appointed as typist with the respondent in the year 1982 but his services were terminated by the respondent when he remained absent for 6 days and that the applicant used to work as Accountant and overall incharge of the factory was Shri Gupta Manager and that leave used to sanction by Shri Gupta and the applicant used to maintain ledger Cash Book and other record. A similar statement was made by the workman, who appeared as WW-2.

9. The learned Authorised Representative of the respondent Shri M.M. Kaushal tried to argue that the case of the applicant is covered under sub-clause 4 of section 2(s) of the said Act, because the applicant used to do supervisory work of the respondent company pertaining to the excise department allowing leave to the workers. In that behalf he made a pointed reference to certain documents Exhibit MX-1 to MX-16. These are copies of the routine correspondence signed by the applicant as Accountant to various departments. From all these letters it cannot be made out that the applicant was working in any supervisory capacity. He seems to be writing these letters at the behest of the management. Otherwise all leave applications submitted to the applicant used to be forwarded by him to the BMM. The applicant had no power to appoint or dismiss any employee. He had no power to sanction leave, though he has been signing routine correspondence on behalf of the respondent. On behalf of the respondent 1977 (34), 206 Indian Factories and Labour Reports between Kirloskar Brothers Limited and Labour Court, Delhi and 1978 (38) Indian Factories and Labour Reports page 372 between M/s Estrela Batteries Limited and State of G.P. was cited. In this authority of the Allahabad High Court it is held that it is not the nomenclature or the description of status of the workman but the actual work performed by the employee which is determinative of whether he is a workman or not. In the earlier authority of Delhi High Court their Lordships observed that while determining the status of the employee approach of the Court has to be positive and not negative and if the applicant does not fall in any of the exceptions mentioned in section 2(s) of the said Act, then by process of elimination he held to be a "workman".

10. So, in the light of my fore-going discussion, I find that the applicant was not doing any supervisory work, which may bring him under exception 4 of the section 2(s) of the said Act, and as such he was a workman and so, this issue does in favour of the applicant.

Issue No. 1:

11. This issue was not rightly pressed on behalf of the management, because a reference to the Labour Court or Tribunal by the Government after initial refusal is not barred by any provisions of the said Act.

Issue No. 3:

12. Appointment letter of the workman is Exhibit MW1/1. His appointment was on probation but no period was mentioned in the same. The same is dated 20th June, 1980. There are signatures of the applicant upon the same dated 22nd June, 1980. So, that would mean that the applicant was appointed on 22nd June, 1980 with the respondent. His services were terminated on 9th April, 1981,—vide letter Exhibit MW 1/18. The same reads as under :—

9th April, 1981.

“Shri C.L. Bansal”

“This is to write that you were employed on the post of Accountant on probation. But we regret to write that we do not see our way to confirm you on this post. Accordingly you would be relieved from your duties w.e.f. today and you may collect all your earned dues today before you go”.

For Murarka Engineering Works,
(Sd.) . . .
Partner

13. The General Standing Orders adopted by the respondent/company (printed copy on the file) provide for a period of six months of probation period during which services of the employee can be dispensed with without assigning any reason. This period of probation could be extended by the respondent by another six months. The same provides further that if the workman offers himself for a further trial of six months after completion of one year's service the management can do so. In the case of the present workman there is no mention of the probationary period in the letter of appointment. Even if it be taken that the same was for a period of six months as per the Standing Orders of the company, even then the same was not extended by any order by the respondent. The learned Authorised Representative of the workman contended that even in the case of a probationer whose services have been terminated before the expiry of probation period without assigning any reason in accordance with the terms of the contract, the Industrial Tribunal can go into the question of validity of the order of termination. Elaborating his arguments further he contended that what has to be seen is whether the action of the employer is *malafide* or whether it amounts to victimisation of the employee or is an unfair labour practice or is so capricious or unreasonable as would lead to the inference that the same has been passed with ulterior motive and is not any *bonafide* exercise of the powers arising out of the contract. This he argued on the strength of the law laid down in 1973 Lab. I.C. 1587 Management of Brook Bond of India (Private Ltd.) *versus* Y.K. Gautam. Another authority cited was 1981 Lab.I.C. 806, between Mohan Lal *versus* the Management of M/s Bharat Electronics Ltd.

14. On the other hand Shri M.M. Kaushal cited 1973 (27) Indian Factories and Labour Reports page 20, between Kedar Nath *versus* State of Punjab 1980(I) LLN468 between Palani Kumar and Indian Bank and another. None of these authorities have got any application to the facts of the present case. Admittedly services of the workman were dispensed with by the respondent after six months of his appointment. Admittedly there is no order on the file extending his period of probation. Even if it be admitted that the management could extend the period of probation for another six months, even then his services could not be dispensed with or terminated without assigning any reasons. In the present case no reasons have been assigned as to why services of the workman were dispensed with. There is not an iota of evidence on the file that the work and conduct of the workman was not satisfactory during the probation period. In the termination letter it is simply mentioned that the services of the workman cannot be confirmed so, his services are being dispensed with and he can collect his dues. In my opinion order of termination passed by the respondent squarely falls within the embrace of unfair labour practice and as such the order of termination cannot be sustained and so, this issue in its entirety goes in favour of the workman.

15. In the light of my foregoing discussion, order of termination is set aside and the workman is ordered to be reinstated forthwith with continuity of service and with full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated, the 11th February, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 36/82/294, dated 21st February, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.